

MICHAEL D. KUJALA - 7/9/2014

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

EXHIBIT

13

Case No. 2:13-cv-00197

MICHAEL J. PRATT, Administer of the *

Estate of ERIC J. PRATT, Deceased *

Plaintiff *

vs. *

NATIONAL RAILROAD PASSENGER *

CORPORATION d/b/a, AMTRAK, NEW *

ENGLAND CENTRAL RAILROAD, INC., *

MICHAEL E. KUJALA AND WILLIAM C. *

RAE, *

Defendants *

VIDEOTAPED DEPOSITION OF: MICHAEL D. KUJALA

BUCKLEY RICHARDSON

1500 Main Street

Springfield, Massachusetts

July 9, 2014 12:12 P.M.

Sharon Waskiewicz

Court Reporter

MICHAEL D. KUJALA - 7/9/2014

Page 7

1 Q. How old are you?

2 A. I'll be 52. I'm 51 years old right now.

3 Q. Did you have any other career-type jobs
4 before the railroad?

5 A. Yes.

6 Q. All right. What did you do before?

7 A. A paper mill and a saw mill.

8 Q. Where were those?

9 A. The paper mill was in Turner's Falls,
10 Massachusetts, the saw mill was in Vernon, Vermont.

11 Q. Do you live here in the Springfield area?

12 A. About 20 miles east from here, Palmer,
13 Mass.

14 Q. What position did you start at?

15 A. Assistant conductor.

16 Q. And that was 25 years ago?

17 A. Correct.

18 Q. So what's that, '89 or so?

19 A. When I hired out, correct.

20 Q. I can do small math even though I'm a
21 lawyer. Most math I can't do.

22 So you start out as an assistant
23 conductor in '89 and where did you move to after
24 that?

25 A. A promoted conductor, I want to say

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MICHAEL D. KUJALA - 7/9/2014

Page 8

1 '92/'93, somewhere around there.

2 Q. And is that what you are today?

3 A. That's what I am today, yes, sir.

4 Q. And with Amtrak trains, you do this only
5 for passenger trains, right?

6 A. Correct.

7 Q. All right. So tell me what the job
8 duties of a conductor on an Amtrak train are?

9 A. I am responsible for the safe passage
10 passenger, loading, unloading, the revenue, all the
11 paperwork involved with the operation of the train.

12 Q. Now, I just want to talk about the day of
13 this incident for this question. Talking to Mr. Rae,
14 and I know you were here, and we know from the
15 reports that you were up in the locomotive.

16 A. Correct.

17 Q. So how much, on a trip like this, a route
18 like this, how much time do you spend up in the
19 locomotive as opposed to in the back?

20 A. It depends how much paper we get. A
21 track line is you want to go from A to B. On a good
22 track line you get from Palmer, Massachusetts to West
23 River, which is a couple miles north of Brattleboro.
24 But there could be foremen out there working. There
25 could be a freight. So you could get from like

MICHAEL D. KUJALA - 7/9/2014

Page 16

1 NRI?

2 A. All three railroads, correct.

3 Q. Are they different?

4 A. Some are.

5 Q. Is NORAC different than GCOR?

6 A. Yes.

7 Q. All right. Well, how's NORAC different
8 on the horn rules?

9 A. NORAC is geared more toward passenger
10 services, cab signals. Up in Vermont we have limited
11 cab signal service. If you have a cab signal
12 failure, you just run restricted speed. That's it.
13 There's a bunch of different other terms in the NORAC
14 book.

15 Q. Okay. So in the area of this incident
16 you're in Vermont, so you're under GCOR?

17 A. Correct.

18 Q. And you're on NCR track.

19 A. Correct.

20 Q. So any of their rules would apply?

21 A. Correct.

22 Q. All right. So the GCOR rule on the horn,
23 what do you understand that to be?

24 A. Well, every crossing, two longs, a short
25 and a long. A person on the track or an animal it,

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MICHAEL D. KUJALA - 7/9/2014

Page 17

1 could be anything, a short blast: Toot, toot, toot,
2 toot. Just a short blast.

3 Q. What about as far as public versus
4 private crossings?

5 A. Every crossing we blow. I think there's
6 something like 287 crossings.

7 Q. On that route?

8 A. On that route.

9 Q. One way?

10 A. One way. And a lot of them are farm
11 crossings. All of these farm vehicles don't have
12 brakes, though. The engineers blow at every
13 crossing, to my knowledge. To my knowledge. I'm not
14 up there all the time.

15 Q. That you witnessed?

16 A. That I witnessed, yes.

17 Q. Are there whistle posts at all of those,
18 to your knowledge?

19 A. No. No.

20 Q. So the horn, as you understand the rule,
21 you blow at every crossing regardless of whistle
22 posts or not?

23 A. Correct.

24 Q. If there's no whistle posts, do you know
25 how long you blow for?

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MICHAEL D. KUJALA - 7/9/2014

Page 23

1 curve and then it goes into a straightaway before
2 this crossing?

3 A. Yes.

4 Q. You can't see the Bemis Road crossing
5 while you're in the curve?

6 A. No.

7 Q. So I just want you to start from when you
8 come out of that curve, right when you can first see
9 it, and tell me what you remember seeing.

10 A. Well, coming up, there's three crossings,
11 I believe, altogether. He blew for the first one.
12 Coming up from Bemis there was a car on the left
13 side, questionable whether it was going to go. It
14 stopped. It was stopped there, rather close to the
15 tracks, but we weren't going to hit it.

16 And on the east side I seen two kids
17 going, coming toward the train. They were off 142 in
18 the bush or whatever. Not off in the driveway, but
19 one kid went across and the second one, I'll never
20 forget. He didn't stop. He just never looked up and
21 just walked in front. By that time Billy was in full
22 emergency.

23 Q. Have you seen the video?

24 A. No.

25 Q. Now, when you first saw the kids, were

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MICHAEL D. KUJALA - 7/9/2014

Page 24

1 they on the road part, were they off of 142?

2 A. No. They were off 142.

3 Q. So they were somewhere between there and
4 the track?

5 A. Correct.

6 Q. All right. And the first boy, when you
7 first saw them, was there some space between them?

8 A. There was a little bit of space.

9 Q. When you first saw them, were they
10 moving? When you saw them, they were walking?

11 A. To my recollection, yes.

12 Q. Now, the first one goes across. Did it
13 look like, to you, that he observed the train?

14 MR. HEMLEY: Objection.

15 THE WITNESS: I don't know. There
16 was a lot of chaos at the time.

17 Q. (By Mr. Sullivan) Did the first one, did
18 he look at you? Did you ever see his face?

19 A. No. No.

20 Q. Did he walk across, run across, jog
21 across?

22 A. A quick pace, I guess. I don't recall.

23 Q. And the second kid coming, Eric, who was
24 hit, he just walks right in front of it?

25 A. Just causally.

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MICHAEL D. KUJALA - 7/9/2014

Page 25

1 Q. Never looks towards you?

2 A. Never looked up. Never looked up.

3 Q. Now, do you know how far you were from
4 Bemis Road when you first saw him?

5 A. I couldn't tell you.

6 Q. Do you know how much time passed by from
7 when you first saw him?

8 A. No.

9 Q. How long is the straightaway, I guess,
10 when you come out of the curve?

11 A. Out of the curve to the straightaway,
12 it's a quarter, half mile. I'm not sure on the
13 particulars of it.

14 Q. I mean it's not, you come out of the
15 curve and (multiple speakers)?

16 A. No. No. No.

17 Q. So when you're on the straightaway, when
18 you first see them, it's not when you first get on
19 the straightaway, is it?

20 A. Not far after. Not very far after.

21 Q. You're going 50 miles an hour, right?

22 A. I guess. The speed limit was 55 in
23 there.

24 Q. All right. Let me make sure I have all
25 the information about the kids. As far as any of the

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Page 36

1 tracks from the east side. The first juvenile
2 crossed the tracks completely. It did not appear to
3 Mr. Kujala that this subject acknowledge the train's
4 presence."

5 A. Which one?

6 Q. The first one.

7 A. I can't answer that. I don't know if he
8 did or not, to be honest.

9 Q. And then he goes on: As the second
10 subject approached the tracks, it looked as if he
11 hesitated just prior to crossing the tracks and then
12 stepped out in front of the train.

13 A. Whether he hesitated or not, I don't
14 know. The only thing I remember is him walking on
15 the edge of the ties and not even looking up and
16 just, "psst", in front.

17 Q. There's a hesitation. That might be an
18 interpretation.

19 A. That could be some kind of an
20 interpretation, but, truly, I'll never forget.

21 Q. You remember just him steadily walking in
22 front of it?

23 A. Just walking like a casual walk in the
24 park. The thing that got me, though, was the kid
25 never looked up. And Billy was laying on that horn.

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MICHAEL D. KUJALA - 7/9/2014

Page 37

1 That kid never looked up.

2 Q. Now, you could hear the horn?

3 A. Oh, absolutely.

4 Q. Have you ever had a horn failure?

5 A. Once.

6 Q. What happened then?

7 A. It was frozen. That was right out of the
8 terminal in St. Albans, Vermont. We had two engines
9 on so we had to spin the whole equipment to the rear
10 unit and turn it into the lead unit, which was
11 working. If there's a horn failure, you have got to
12 stop at every crossing to protect them, every
13 crossing.

14 Q. Now, this one coming out of St. Albans,
15 though, the horn was frozen?

16 A. This was the one to St. Albans.

17 Q. Going to St. Albans?

18 A. Which one are we talking about?

19 Q. Where you had the horn failure.

20 A. St. Albans, Vermont, heading south.

21 Q. Coming from St. Albans?

22 A. Going from St. Albans toward Springfield
23 Mass, correct.

24 Q. And that was coming right out of --

25 A. Right out of the terminal. Right out of

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